

1991

## Utah v. Rowe : Brief of Respondent

Utah Supreme Court

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BRIEF

910165

IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH,	)	
	)	
Plaintiff-Petitioner,	)	Case No. 910165
	)	
vs.	)	
	)	
KELLEY ROWE,	)	
	)	Category No. 14
Defendant-Respondent.	)	

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BRIEF OF DEFENDANT-RESPONDENT

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ON WRIT OF CERTIORARI  
TO THE UTAH COURT OF APPEALS

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FILED

APR 16 1992

CLERK SUPREME COURT  
UTAH

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BRIEF OF RESPONDENT

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JURISDICTION AND NATURE OF PROCEEDINGS

This case is before the Court on a writ of certiorari to the Utah Court of Appeals. This Court has jurisdiction to hear the case under Utah Code Ann. §78-2-2(3)(a) (Supp. 1991).

STATEMENT OF ISSUES PRESENTED ON APPEAL

AND STANDARDS OF APPELLATE REVIEW

The following issues are presented for review:

1. Did the majority of the court of appeals erroneously conclude that a violation of the nighttime search warrant authorization provision, Utah Code Ann. §77-23-5 (1990), constitute a constitutional violation of such that the "exclusionary rule" is applicable? Did the majority of the court of appeals erroneously conclude that the officers



acted in "bad faith" in executing the search warrant.

2. Did the majority of the court of appeals erroneously conclude that the status of being an "invited guest" in a third-party's home "vests" the guest with a legitimate expectation of privacy in the residence such that the guest may challenge the validity of a search warrant for the home? Does, inversely, a guest lose his/her constitutional protections and freedoms from unreasonable searches at a front door?

3. Did the majority of the court of appeals erroneously conclude that the state must prove a defendant's abandonment of an expectation of privacy by "clear, unequivocal and decisive evidence"?

#### CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Relevant constitutional provisions, statutes and rules for a determination of this case are, in pertinent part:

**Utah Code Ann. §77-7-5 (1990). Issuance of warrant -- Time and place arrests may be made.**

A magistrate may issue a warrant for arrest upon finding probable cause to believe that the person to be arrested has committed a public offense. If the offense charge is: (1) a felony, the arrest upon a warrant may be made at any time of the day or night.

**Utah Code Annotated §77-23-5 (1990). Time for service -- Officer may request**

**assistance.**

(1) The magistrate must insert a direction in the [search] warrant that it be served in the daytime, unless the affidavits or oral testimony state a reasonable cause to believe a search is necessary in the night to seize the property prior to it being concealed, destroyed, damaged or altered, or for other good reason; in which case he may insert a direction that it be served any time of the day or night. An officer may request other persons to assist him in conducting the search.

**Utah Code Ann. §77-23-10 (1990). Force used in executing warrant -- Notice of authority prerequisite, when.**

When a search warrant has been issued authorizing entry into any building, room, conveyance, compartment or other enclosure, the officer executing the warrant may use such force as is reasonably necessary to enter:

(1) If, after notice of his authority and purpose, there is no response or he is not admitted with reasonable promptness; or

(2) Without notice of his authority and purpose, if the magistrate issuing the warrant directs in the warrant that the officer need not give notice. The magistrate shall so direct only upon proof, under oath, that the object of the search may be quickly destroyed, disposed of, or secreted, or that physical harm may result to any person if notice were given.

#### STATEMENT OF THE CASE

Defendant, Keeley Laursen Rowe, was charged with possession of a controlled substance (methamphetamine), a third degree felony, in violation of Utah Code Ann. §58-37-8(2)(a)(i) and (b)(ii) (Supp. 1989) (R. 10). Prior to trial, defendant-respondent moved to suppress the evidence seized

pursuant to a search warrant executed on a third-party's home in which she was present (R. 28-31). The matter was considered without hearing, denying defendant-respondent the opportunity to more clearly evidence her standing and to respond to the state's position. The matter was ruled upon based on the written memoranda submitted by the parties, and denied (R. 32-41, 51-55, 60-61).

Subsequently, defendant-respondent waived her right to a jury; a bench trial was held on March 21, 1989, in the Fifth Judicial District Court, Washington County, Utah (R. 50, 62-65; T. 5). During trial, defendant-respondent reasserted her motion to suppress the evidence (T. 7-8, 104-05). The motion was again denied (T. 108). Defendant-respondent was convicted as charged (R. 65; T. 181). Defendant-respondent was sentenced to the statutory indeterminate term of zero to five years; but, imprisonment was stayed and defendant-respondent was placed on probation (R. 80-84). Defendant-respondent was not granted the opportunity to be heard and either present a reply or evidence in opposition to the state's assertions.

On appeal, the Utah Court of Appeals, in a split decision, reversed defendant's conviction and remanded the case for a new trial, concluding that (1) the search warrant improperly authorized a nighttime search, (2) the remedy for

a defective nighttime search authorization was suppression, (3) the "good-faith" exception of Leon did not apply (4) defendant-respondent, as an "invited guest" in a third-party's home, had an expectation of privacy in the home sufficient to allow her to challenge the search warrant, and (5) defendant-respondent had not abandoned an expectation of privacy in her purse left in the home. State v. Rowe, 806 P.2d 730 (Utah App.), cert. granted, 167 Utah Adv. Rep. 26 (Utah July 3, 1991).

On April 9, 1991, the state timely filed a petition for writ of certiorari in this Court. On July 3, 1991, the petition was granted.

#### STATEMENT OF THE FACTS

On October 7, 1988, a search warrant was issued and executed which authorized police to search for narcotics in the residence of Stan Swickey in Leeds, Utah. The warrant contained provisions which allowed police to enter "day or night," and to effect the search without notice, i.e., on a "no-knock" basis. The warrant was issued based on information in the officer's supporting affidavit that a confidential informant had been contacted by Swickey, who told the informant that he, Swickey, had picked up a quantity of methamphetamine and marijuana that was being stored at his home in Leeds. The affidavit in support of the warrant

contained preprinted language which stated that the affiant reasonably believed that the property sought could be easily destroyed or hidden or that harm to officers could result from notice. Following this language are two boxes that the affiant can check, and which were checked, to request nighttime and "no-knock" authority. No other factual information supports these requests.

The warrant was executed on a "no-knock" basis on October 7, 1988, at approximately 11:30 p.m. When police entered Swickey's apartment, they found eight people, in addition to Swickey, in the home. Everyone except defendant-respondent was in the living room playing cards around a table. Defendant-respondent was in the kitchen. After securing the home, the officers had defendant-respondent join the other people in the living room, while Swickey was taken into the kitchen and placed under arrest, pursuant to an arrest warrant, and advised of the search warrant. Another individual was arrested when the officers saw drugs nearby, in plain view. The remaining individuals, including defendant-respondent, were told they could leave the premises. Defendant-respondent did not have her shoes, and asked if she could go to the bedroom to retrieve them. An officer accompanied her to the room, where she took the shoes from a pile of items. The officer asked her if she had

everything that was hers from that room. Defendant-responent replied that she did.

After defendant-responent left, the officers conducted a search of the home. Narcotics were found throughout the house. A purse was seized from the pile in the bedroom from which defendant-responent had retrieved her shoes. Inside the purse was a small brown vial which contained methamphetamine. Also in the purse were several documents that revealed that the purse belonged to defendant-responent.

Police contacted defendant-responent the next day and advised her that they had a purse that belonged to her. She came down to the station and was arrested. After being advised of her Miranda rights, defendant-responent admitted that the purse and vial of drugs were hers. She told police that she had been "'ripping off" drugs from Swickey.

Prior to trial, defendant-responent filed a motion to suppress the vial and other contents seized from her purse. The motion was accompanied by a memorandum of points and authorities. The state filed a memorandum opposing defendant's motion to suppress, and requested a ruling on defendant's motion. On March 17, 1989, the court issued a written order denying defendant's motion.

Defendant-responent waived her right to a jury trial,

and a bench trial commenced on March 21, 1989. During the trial, defendant-respondent again renewed her motion to suppress. The basis of her argument was that the search warrant was defective since the supporting affidavit did not support the nighttime or "no-knock" authorization. The state argued that "Mr. Swickey would be the only one to have standing to object to that," and also argued the merits of the claim. The court denied the renewed motion. Defendant-respondent was convicted as charged.

Defendant-respondent raised three issues on appeal, all of which challenge the district court's failure to suppress the items seized from defendant's purse: (1) Whether there was sufficient factual information in the supporting affidavit to authorize a nighttime search, (2) whether there was sufficient factual information in the supporting affidavit to authorize a "no-knock" search, and (3) whether the search was defective since the warrant was dated subsequent to the search. Case factual statement taken from Court of Appeals decision. State v. Rowe, 806 P.2d 730 (Ut.App. 1991).

#### SUMMARY OF ARGUMENT

The court denied the motion to suppress without hearing. The defendant-respondent filed a motion with the court and was awaiting response from the state prior to the time of

trial. The defendant-respondent received plaintiff's response to the motion as well as the Judge's decision denying the motion within the same week of the trial date. Transcript page 8, lines 6-11.

The court did not allow the defendant-respondent a factual hearing nor did the court make any factual findings on the record in the denial of said motion. See Rule 12, Utah Rules of Criminal Procedure. Rule 12(c). In essence, the trial court denied defendant-respondent the opportunity to respond to the issue of standing and to evidence at hearing her rights to be in the home. Based thereon, the defendant-respondent asserts:

(1) A guest in a home has standing to object to an illegal search of her personal property found within the home. This issue is resolved by a finding that the defendant-respondent had a legitimate and recognized right or expectation of privacy in her own personal property. She did not forfeit these rights at the door's front.

(2) Abandonment did not exist. By leaving her purse behind under the stress of the situation, the respondent did not manifest the necessary intent to abandon her purse in the home. The warrant may not give the police blanket authority to search the property of others found within a home. Either forgetting the purse or a disclaimer of the person was forced



by the unlawful search and the attendant search of each guest. Neither arises to the level of "abandonment".

(3) Suppression is the only remedy available. If not recognized, the statute imposing additional protections or precautions for nighttime searches, is essentially avoided and circumvented. It would be idealistic to believe police and magistrates cautiously watch over the civil rights of our citizens. Unavoidable is the fact situation present here. A magistrate rubber stamps conclusions of police officers who simply check off boxes on a pre-set form. The protection granted by constitutional mandate requires greater sanctions.

#### ARGUMENT

##### POINT I

THE RESPONDENT HAS STANDING TO ATTACK THE VALIDITY  
OF THE WARRANT BECAUSE HER PERSONAL RIGHTS UNDER  
THE FOURTH AMENDMENT WERE VIOLATED.

The lower court allowed the State to raise the standing issue. The respondent asserts the necessary standing to challenge the legality of the search existed. If this Court does not so agree, the defendant-respondent should be given an opportunity to be heard on that issue at an evidentiary hearing. The United States Supreme Court has abandoned an automatic standing rule based on being present or being charged with a crime involving possession in favor of one

that is based on an individual violation of a constitutionally protected interest. See United States v. Salvucci, 448 U.S. 83 (1980).

The proponent of a motion to suppress must show that their own Fourth Amendment rights were violated by the challenged search or seizure. Rakas v. Illinois, 439 U.S. 130, 131 N. 1 (1978). The standard is the same under the United State Constitution and under the Utah Constitution Article I, Section 12. See State v. Constantino, 732 P.2d 1256, 126-27 (Utah 1987); State v. Iacono, 725 P.2d 1375, 1377-78 (Utah 1986); State v. Grueber, 776 P.2d 70, 73 (Ut. App. 1989); State v. DeAlo, 748 P.2d 194, 196 (Ut. App. 1987).

Under the standard articulated by the United States Supreme Court and adopted by the Utah Supreme Court the defendant-respondent has standing to challenge the search. A violation of her personal rights occurred when the officers searched her personal property, a purse. A purse of which she was essentially forced to leave at the residence, otherwise, she was to submit to a further search of herself and the purse. A purse is property protected under the constitution. U.S. Const. Amend. IV.

Since the decision in Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967), it has been the law

that "capacity to claim the protection of the Fourth Amendment depends . . . upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place." Rakas v. Illinois, 439 U.S. 128, 143, 99 S.Ct. 421, 430, 58 L.Ed.2d 387 (1978). A subjective expectation of privacy is legitimate if it is ["]one that society is prepared to recognize as 'reasonable,['"] id. at 143-144 n. 12, 99 S.Ct. at 430 n. 12, quoting Katz, supra, at 361, 88 S.Ct. at 516 (Harlan, J., concurring). Minnesota v. Olson, 110 S.Ct. 1684, 1687, 109 L.Ed.2d 85 (1990). The state's position that defendant-respondent failed to establish standing based on the nature of her presence in Swickey's home is not compelling.

In Olson, the Supreme Court concluded "that Olson's status as an overnight guest is alone enough to show that he had an expectation of privacy in the home that society is prepared to recognize as reasonable." Id. 110 S.Ct. at 1688. In this case, the evidence did not establish that defendant-respondent was an overnight guest in Swickey's home on the night of the search. There is, however, uncontroverted evidence that defendant-respondent had an intimate relationship with Swickey, which continued to the time of the incident. She had stayed overnight in the home on several prior occasions. She had placed her personal items as her

purse in the bedroom. At the time of the search, she was in the kitchen preparing (heating) drinks for all the guests.

Olson squarely holds that an overnight guest has such standing. Olson suggests that a social visit of a duration less than overnight would not deprive a guest of standing.

In this case, defendant-respondent felt secure enough in the home to remove her shoes, leave her purse beyond her view, and roam to rooms other than where her fellow guests were playing cards. Eschewing an analysis based on free access and right to exclude others, the Olson Court focused on the social tradition that

hosts will more likely than not respect the privacy interests of their guests, who are entitled to a legitimate expectation of privacy despite the fact that they have no legal interest in the premises and do not have the legal authority to determine who may or may not enter the household.  
Id. at 1698.

A standing challenge in the search and seizure context is resolved by a determination of "whether governmental officials violated any legitimate expectation of privacy." Rawlings v. Kentucky, 448 U.S. 98 106, 100 S.Ct. 2556, 2562, 65 L.Ed.2d 633 (1980). The defendant's status as an invited guest in the home vested her with a reasonable expectation of privacy in the home. She would expect that her personal rights of privacy would be honored and respected. She

expected reasonably that she and her property would not be abused or violated. She thereby gained sufficient standing to challenge the validity of the search warrant and the resulting search of her purse.

She was at the place searched, and it was her property that was searched. Most importantly, it was her personal rights that were violated when the police searched through her purse.

A similar case is cited by the state, Rawlings v. Kentucky, 448 U.S. 97 (1980). In Rawlings the court did not find a personal violation sufficient to allow standing to the defendant not because it was a purse searched but because it was not his purse searched and he had no reasonable expectation of privacy that society was willing to recognize in the purse. Again, Mr. Swickey here may not have standing to object to the search of another's property, but Ms. Rowe does.

In Rawlings the police entered a home with an arrest warrant for the occupant. Inside the home they smelled marijuana smoke and found several people present. An officer left the home to obtain a search warrant while the remaining officers detained the occupants. The police were willing to let anyone leave if they would consent to a body search. When the officer returned with a search warrant, he directed

one of the occupants, a Ms. Vanessa Cox, to empty her purse on the coffee table. The contents partly consisted of narcotics. After dumping out her purse, she turned to the man next to her, Mr. Rawlings, and told him to take what was his. He took the drugs and at his trial motioned to suppress the evidence as the product of an illegal search. The U.S. Supreme Court rejected this claim because he did not have a reasonable expectation of privacy in Ms. Cox's purse. Id. at 104.

In the case at bar, it is the owner of the purse who is claiming a violation of her constitutionally protected rights, not the home owner. She clearly has standing to contest the legality of the search of her own personal property.

The respondent has the requisite standing to challenge the validity of the search.

## POINT II

THE RESPONDENT DID NOT INTEND TO ABANDON HER PURSE  
WHEN SHE LEFT THE HOME DURING THE POLICE SEARCH.

The state claims the respondent abandoned any reasonable expectation of privacy she may have had in her purse by leaving it in a place she knew would be searched. The standard of abandonment for property law is different in some respects from the standard for Fourth Amendment standing. However, the two standards are the same in one important

respect, both require an intent to abandon. "The [court] must focus on the intent of the person who is alleged to have abandoned the place or object. The test is an objective one, and intent may be inferred from 'words spoken, acts done, and other objective facts.'". United States v. Thomas, 864 F.2d 843, 846 (D.C. Cir. 1989).

Objectively looking at the circumstances under which the respondent left her purse in the house, the State cannot and does not show an intent to abandon. It is the state's burden. People v. Conreras, *infra*. The officers had burst into the house without knocking, and after sweeping the home for people, rounded everyone up in the living room. The defendant was escorted into the bedroom by a police officer to get her shoes so she could go home. She retrieved her things from a pile of clothing on the floor and thinking she had all that was hers left the home. The defendant did not intend to give up ownership of her purse and its contents to Mr. Swickey. It is more likely that under the stress of the situation and her haste to leave the stressful situation of a police search of a home, she merely forgot her purse.

However, "abandonment must be distinguished from a mere disclaimer of a property interest made to the police prior to the search, which under the better view does not defeat standing." United States v. Morales, 737 F.2d 761, 763-64

(8th Cir. 1984) (quoting 3 W. LaFave, Search and Seizure §11.3, at 548-49 (1978)).

Whether defendant-respondent had abandoned her purse, under search and seizure analysis, is primarily a factual question of intent to voluntarily relinquish a reasonable expectation of privacy, which may be inferred from "words spoken, acts done, and other objective facts." Thomas, 864 F.2d at 846 (quoting United States v. Colbert, 474 F.2d 174, 176 (5th Cir. 1973)). See also Gurgel v. Nichol, 19 Utah 2d 200, 429 P.2d 47, 48 (1967) (abandonment ordinarily a question for the factfinder to be determined from the facts and circumstances). The burden of proving abandonment falls on the state, People v. Contreras, 210 Cal.App.3d 450, 259 Cal.Rptr. 290, 293 (1989), and must be shown by "clear, unequivocal and decisive evidence." Friedman v. United States, 347 F.2d 697, 704, (8th Cir. 1965). See also United States v. Boswell 347 A.2d 270 274 (D.C. 1975); O'Shaughnessy v. State, 420 So.2d 377, 379 (Fla.Dist.Ct.App. 1982). It "is measured from the vantage point" of the defendant, and not the police. Narain v. State, 79 Md.App. 385, 556 A.2d 1158, 1161 n. 4 (1989). "It is only the [defendant's] state of mind that counts." It is from the available facts that the issue is resolved. Much as when the state's case must evidence a "specific intent" crime.



Defendant Rowe was allowed to leave the party along with Swickey's other guests; however, subject to the search. She was conducted to the bedroom to retrieve her shoes and was given the opportunity to claim any other property belonging to her. When asked by the police officer if anything else belonged to her, she stated that she had retrieved everything in the bedroom that was hers. That repudiation of interest in property located the bedroom is consistent with a conclusion of abandonment. It is not, however, inconsistent with a conclusion of mere disclaimer of interest to avoid self-incrimination. The state failed to produce evidence which would develop this issue and perhaps meet its burden of proving abandonment under search and seizure analysis. Accordingly, abandonment in the Fourth Amendment sense was not established by the state.

### POINT III

GOOD FAITH AND AN APPROPRIATE REMEDY  
(DEFENDANT-RESPONDENT RELIES ALMOST EXCLUSIVELY  
UPON THE RULINGS OF THE COURT OF APPEALS DECISION.  
BASED THEREON, DEFENDANT-RESPONDENT ADOPTS ALMOST ENTIRELY  
THE RULINGS THEREIN.)

The state further claims the search can be validated by the officer's good faith reliance on the deficient warrant. United States v. Leon, 468 U.S. 897, 920-23, 104 S.Ct. 3405, 3419-20, 82 L.Ed.2d 677 (1984). In Leon, the Supreme Court held that the exclusionary rule, aimed at deterring unlawful police conduct, does not bar evidence

obtained by officers acting in good faith reliance on a defective warrant. Id. But the Leon doctrine is not without limitations. When the magistrate reviewing the affidavit in support of the search warrant is not presented with sufficient facts to determine probable cause, the warrant cannot be relied upon by searching officers. Id. 468 U.S. at 915, 104 S.Ct. at 3417. The Court determined that there was nothing in the affidavit in this case that would offer any basis to the magistrate for a finding of probable cause to allow a nighttime search. It appears from the record that the endorsement of the nighttime authorization was done in impermissible "rubber stamp" fashion. See Aguilar v. Texas, 378 U.S. 108, 111, 84 S.Ct. 1509, 1512, 12 L.Ed.2d 723 (1964).

Any officer, cognizant of his responsibility to uphold constitutional guarantees, should easily recognize the impermissibility of rubber stamp warrants.

The question of the officer's good faith reliance is subject to de novo determination by this court. United States v. Freitas, 800 F.2d 1451, 1454 (9th Cir. 1986). The conduct of the officers executing the search warrant must be objectively reasonable. Leon, 468 U.S. at 919, 104 S.Ct. at 3419.

Police officers cannot ignore an unambiguous statutory directive to present the magistrate with "reasonable cause to believe a search is necessary in the night," Utah Code Ann. §77-23-5(1) (1990), and then claim that their very failure to do so is objectively reasonable conduct on their part. See Leon, 468 U.S. at 919 n. 20, 104 S.Ct. at 3419 n. 20 (objective standard requires reasonable knowledge of the law by police officers); United States v. Freitas, 610 F.Supp. 1560, 1572 (N.D.Cal. 1985) (police agency must train officers, who have obligation to ensure that warrant comports with constitutional law), aff'd, 800 F.2d 1451 (9th Cir. 1986).

In this case, the same officer prepared the affidavit, secured the warrant, and executed the search. He had personal knowledge of the affidavit's contents. They were so cavalier in its preparation that the magistrate was dated subsequent to the search. A Leon exception should not be utilized to circumvent constitutional protections or to cover "sloppy" police work.

Having so concluded, we must now turn our attention to whether the warrant's issuance in violation of the nighttime search requirements necessitates suppression of the evidence seized, namely the drugs and other items found in the defendant's purse. We recognize that mere ministerial and technical errors in the preparation or execution of search warrants will not, without more, invalidate the warrant. See, e.g., State v. Buck, 756 P.2d 700, 702-03 (Utah, 1988) (violation of "knock-and-announce" rule did not require suppression when no one was at home at the time of the search to respond to the knock). Cf. State v. Kirn, 70 Haw. 206, 767 P.2d 1238, 1239-40 (1989) (suppression may be appropriate for violation of constitution, statute, or administrative regulation).

However, where a statute establishes procedures for protection of substantive rights, such as section 77-23-5 does, violation of the statute cannot be dismissed as technical or ministerial in nature and suppression of the evidence gained from the challenged search is the appropriate remedy. Awaya v. State, 5 Haw.App. 547, 705 P.2d 54, 59 (seizure of evidence not particularly described in the warrant required suppression), cert. denied. 7 Haw. 685, 744 P.2d 781 (1985); Wiggin v. State 755 P.2d 115, 117 (Okla.Crim.App. 1988) (violation of statute similar to section 77-23-5 mandates suppression); State v.

Coyle, 95 Wash.2d 1, 621 P.2d 1256, 1263 (1980) (suppression required for violation of notice requirement). But see State v. Brock 294 Or. 15, 653 P.2d 543, 545-46 (1982) (warrant allowing nighttime search without any showing of reasonable necessity not invalid and suppression not required, when legislature had considered and declined to enact specific exclusionary rule for such circumstances).

The historical character of a nighttime search further persuades us that violation of the statute requires suppression. See Carroll v. United States, 267 U.S. 132, 149, 45 S.Ct. 280, 283-84, 69 L.Ed. 543 (1925) (question of reasonableness of a search must be viewed not only from the particular facts, but also with an eye toward what was considered reasonable at the time of the adoption of the Fourth Amendment). Searches of homes were soundly condemned by the drafters of the Bill of Rights and under English common law. See United States ex rel. Boyance v. Myers, 398 F.2d 896, 897-98 (3rd Cir. 1968). "Night-time search was the evil in its most obnoxious form." Monroe v. Pape, 365 U.S. 167, 210, 81 S.Ct. 473, 496, 5 L.Ed.2d 492 (1961) (Frankfurter, J., dissenting). The propriety of executing a search of an occupied dwelling at night is "sensitively related to the reasonableness" prong of the Fourth Amendment. United States v. Gibbons, 607 F.2d 1320, 1326 (10th Cir. 1979). See also State v. Lindner, 100 Idaho 37, 592 P.2d 852, 857 (1979) ("entry into an occupied dwelling in the middle of the night is clearly a greater invasion of privacy than entry executing during the daytime").

#### CONCLUSION

The respondent's personal reasonable expectations of privacy were violated. They searched her purse and thus gave her standing to contest the validity of the search.

To abandon property you must have the intent to do so.

The facts surrounding the defendant's leaving her purse do not support a finding of an intent to abandon her property.

The court should find the search was unlawful and the evidence found pursuant to said search inadmissible at trial. It should be suppressed.

RESPECTFULLY submitted this 6 day of April, 1992.

  
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SHELDEN R. CARTER  
Attorney for Defendant-Respondent

MAILING CERTIFICATE

I HEREBY CERTIFY that I personally mailed a true and correct copy of the foregoing on this 6 day of April, 1992, by first-class, U.S. Mail, postage prepaid to the following:

Mr. R. Paul Van Dam  
Attorney General  
Ms. Christine F. Soltis  
Assistant Attorney General  
236 State Capitol Building  
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\_\_\_\_\_  
Secretary